Editor's note: Appealed -- aff'd, Civ.No. C 86-0213 (D.Wyo. Jan. 28, 1988), petition for rehearing denied (Mar. 21, 1988), aff'd, No. 88-1437 (10th Cir. May 10, 1989) 874 F.2d 728

WILLIAM REPPY (ON RECONSIDERATION)

IBLA 84-654 Decided March 31, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application U-54478.

Reconsideration denied.

1. Oil and Gas Leases: Applications: Drawings

The Secretary has broad discretion to frame per se rules in administering the simultaneous oil and gas leasing program. Thus, an application that violates 43 CFR 3112.2-4 by failing to disclose any party or filing service which is in the business of providing assistance to participants in the program is properly rejected for violation of the regulation alone.

APPEARANCES: William Reppy, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William Reppy has petitioned this Board to reconsider its decision of December 19, 1985, William Reppy, 90 IBLA 80 (1985), affirming a decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application U-54478. This application, filed by petitioner, was drawn with first priority in the September 1983 drawing of simultaneously filed oil and gas lease applications. BLM rejected this application, however, because it held that petitioner had failed to comply with regulation 43 CFR 3112.2-4. Regulation 43 CFR 3112.2-4 requires that any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program indicate on the lease application the name of the party or filing service that provided assistance.

Reppy does not deny that assistance was rendered to him, nor that his application failed to indicate the identity of Oil and Gas Properties, Inc., the company providing such assistance. He argues instead that BLM's decision is arbitrary because it fails to consider a number of factors that demonstrate how disproportionate the penalty in this case is when compared with the benefits produced by strict compliance with 43 CFR 3112.2-4. The penalty in this case is, of course, rejection of his application, as provided by 43 CFR 3112.5-1.

Petitioner questions, for example, whether rejection of incomplete applications is sufficiently communicated to the public so as to deter other users of filing services 1/ from similar errors. He also questions whether the benefit provided by compliance with 43 CFR 3112.2-4 justifies the drastic penalty of rejection when equivalent means of knowledge 2/ were available to BLM. Reppy describes the purpose of this regulation as the identification of those "assistors" who may be engaged in prohibited multiple filings by reason of an interest in more than one application or lease. Because the application form calls elsewhere for disclosure of all parties in interest, regulation 43 CFR 3112.2-4 yields useful information, according to petitioner, only in those cases where the assistor conceals this interest from his client. 3/ Petitioner asks if this limited use justifies rejection of an incomplete application.

Reppy also alludes to inaccurate advice from his filing service, urging him to simply sign and date his application and thereby causing his application to be incomplete. Similarly misleading in petitioner's view is BLM's use of the term "filing service" on its application form. BLM should be estopped to enforce the regulation calling for disclosure of such services, petitioner urges, particularly, as here, where the applicant filed his own application and was not advised by his assistor to disclose the identity of the assistor.

Petitioner's arguments above reveal an able understanding of regulations 43 CFR 3112.2-4 and 43 CFR 3112.5-1. Had such arguments been proffered to BLM during the comment period for these regulations, it is possible that BLM might have changed the strict character of these regulations and allowed for a measure of discretion in its adjudications. Such is not the case, however. Instead, these regulations were promulgated as rules the violation of which, by itself, results in disqualification, as described above. They are regarded as having the force and effect of law, and are binding on the Board. Geosearch, Inc., 50 IBLA 347 (1980).

1/ For the sake of convenience, we will occasionally use the term "filing service" to describe those persons providing assistance to participants in the Federal simultaneous oil and gas lease program. See Ronald Valmonte, 87 IBLA 197 (1985), for further clarity in the use of this term. Petitioner prefers to use the term "assistor" for this purpose, because he finds the term "filing service" to be inaccurate in describing Oil and Gas Properties, Inc.

2/ In the present case, petitioner states that the envelope and money order accompanying his application revealed the identity of his filing service. A third means of revealing the identity of a filing service, petitioner notes, would be for BLM to contact individual applicants and ask whether such a service had been used. The low number of filers (24) for the parcel at issue, UT 332, reduces the burden of such contacts in the present case, Reppy suggests.

3/ Moreover, Reppy continues, BLM need not check all unselected applications for evidence of a multiple filing. When a number of such prohibited filings are revealed, BLM's search may cease.

Petitioner contends in general that the benefits of regulation 43 CFR 3112.2-4 do not justify the harshness of 43 CFR 3112.5-1 and that some discretion should be vested in BLM to ameliorate the harsh effects of per se rules. Similar arguments have been considered and rejected in past litigation. Thus in Lowey v. Watt, 684 F.2d 957, 967 (D.C. Cir. 1982), a case cited with approval by petitioner, the court held the Department has broad discretion to frame per se rules, even if they may produce harsh results, to simplify its administrative task.

An appreciation of the administrative task similarly guided the United States District Court for the District of Columbia in Alexander v. U.S. Department of the Interior, No. 82-0231 (D.D.C. May 15, 1984). Rejecting the argument that requiring answers to items (d) through (f) on the application serves no purpose, the court held:

> This argument is without merit. The magnitude of the leasing program as well as the need to eliminate any discretion by BLM employees offer ample justification for the Secretary's adoption of per se rules. See Brick v. Andrus, 628 F.2d [213] at 215-16 [D.C. Cir. 1980]; see also Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976) (giving first drawn entrant additional time to file required information infringes on rights of second drawn offeror). [Emphasis added.]

Slip op. at 13 n.17.

Brick v. Andrus, supra, was perhaps the first case to recognize the validity of per se rules for the simultaneous oil and gas lease program. Such rules may be adopted, the court held, if the Secretary deems them useful in the administration of the program. 628 F.2d at 216. Two additional conditions for use of such rules were set forth in Brick: first, such rules must notify lease applicants of the applicable requirements and, second, such rules must be consistently applied. Accord, Gendelman v. Watt, 593 F. Supp. 859, 861 (D.D.C. 1984). No argument is advanced by petitioner that either of these conditions has been violated. 4/

Most recently in KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), the Court of Appeals for the Tenth Circuit added a third condition for the use of per se rules. Construing its earlier decision in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), 5/ the court held that "[r]ead in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose." 759 F.2d at 816. KVK involved the rejection of an application which was signed by only

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4/ Indeed, a notice appearing in the Federal Register on August 19, 1983, advised the public that BLM would strictly enforce the provisions of 43 CFR 3112.2-4 in order to preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings. 48 FR 37656.

5/ In Conway, the court held that the omission of a date on an application that had been filed within the applicable filing period was a de minimis, nonsubstantive error that would not support rejection of the application.

one partner of a three-member partnership (instead of all three) and which failed to bear the partnership serial number in the appropriate place on the application. In contrast to its decision in Conway, the court affirmed rejection of this incomplete application: "Unlike the date in Conway which we determined to be unessential, the requirement that the validity of an application be facially established is a substantive condition necessary to satisfy legitimate government interests." (Emphasis supplied.) 759 F.2d at 817.

Petitioner does not establish error in BLM's decision by suggesting how the regulations might be rewritten to more effectively curb the abuses of the simultaneous program. The Secretary is charged with this responsibility, and petitioner's failure to satisfy the per se requirements of the Secretary's regulations amply supports rejection of application U-54478.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge